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## 6 IN THE UNITED STATES DISTRICT COURT

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## FOR THE NORTHERN DISTRICT OF CALIFORNIA

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ROBERT J. JONES,

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Plaintiff,

No. C 07-03054 JSW

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v.

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NAPA POLICE DEPARTMENT, et al.,

**ORDER TO SHOW CAUSE**

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Defendants.

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In an Order dated September 26, 2008, the Court dismissed all of plaintiff Robert J. Jones's ("Plaintiff") claims against defendants County of Napa, Deputy District Attorney Jose Rossi, and the City of Napa. Plaintiff's remaining claims are against his soon to be ex-wife Michelle Jones ("Ms. Jones") and Thomas Toler, an alleged bail bondsman. In addition to state-law claims, Plaintiff asserts claims under 42 U.S.C. § 1983 ("Section 1983") against Ms. Jones and Toler.

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To state a claim under Section 1983, a plaintiff must allege that (1) a person acting under color of state law (2) deprived him of a right, privilege, or immunity secured by the Constitution or federal statute. *Id.* Generally, private parties do not act under color of state law. *Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991). The complaint, therefore, must allege facts tending to show that the private parties' conduct has caused a deprivation of federal rights that may be fairly attributable to the State. *Id.* at 708 (quoting *Jones v. Community Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984) (holding that conclusionary allegations of action under color of state law, "unsupported by facts, [will be] rejected as insufficient to state a

## United States District Court

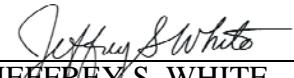
For the Northern District of California

1 claim.”)). A two-part test exists to determine whether private-party action causes a deprivation  
2 that occurs under color of state law. *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 937 (1982).  
3 First, the deprivation must be caused by the exercise of some right or privilege created by the  
4 State; by a rule of conduct imposed by the state; or by a person for whom the State is  
5 responsible. *Id.* Second, the party charged with the deprivation must be a state actor. *Id.* A  
6 person may become a state actor by performing a public function or being regulated to the point  
7 that the conduct in question is practically compelled by the State. *Vincent v. Trend Western*  
8 *Technical Corp.*, 828 F.2d 563, 569 (9th Cir. 1987). Conclusory allegations of a conspiracy  
9 between private individual and state actors are insufficient as a matter of law to allege the  
10 requisite state action. *Woodrum v. Woodward County, Okl.*, 866 F.2d 1121, 1126 (9th  
11 Cir.1989).

12 Accordingly, Plaintiff is HEREBY ORDERED TO SHOW CAUSE in writing no later  
13 than **October 20, 2008**, as to why the Court should not dismiss his Section 1983 claims against  
14 Ms. Jones and Tohler for failure to state a claim pursuant to Federal Rule of Civil Procedure  
15 12(b)(6).

16 **IT IS SO ORDERED.**

17 Dated: September 30, 2008

  
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JEFFREY S. WHITE  
19 UNITED STATES DISTRICT JUDGE  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

ROBERT J. JONES,

Case Number: CV07-03054 JSW

Plaintiff,

## **CERTIFICATE OF SERVICE**

V.

NAPA POLICE DEPT. et al,

Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 30, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert J. Jones  
2063 Main St.  
Suite 222  
Oakley, CA 94561-3302

Dated: September 30, 2008

*Jennifer Ottolini*  
Richard W. Wiekling, Clerk  
By: Jennifer Ottolini, Deputy Clerk